TING KING YII @ TING KING YU & 17 ORS.

v.

MINISTER FOR RESOURCE PLANNING & ANOR.

HIGH COURT BORNEO, MIRI
DATUK JOHN CHONG YIK LIONG J.
[ORIGINATING MOTION NO. MR. 12 OF 1986]
30 DECEMBER 1993

INTERPRETATION: Sections 47, 48, 49 & 51 Sarawak Land Code (Cap. 81) - Land Acquisition - Whether notice under s. 47 part and parcel of the acquisition process - Notice under s. 48 - Whether independent of notice under s. 47 - Inquiry into compensation - Section 51 - Whether holding of inquiry thereof a prescribed act which the Superintendent of Lands and Surveys ought to perform upon the publication of s. 47 notice - Whether duty to hold inquiry arose only after publication of s. 48 notice.

LAND LAW: Sarawak Land Code (Cap 81) - Acquisition - Declaration in the Gazette that land needed by Government - Declaration under s. 48 made twelve years after notification under s. 47 being gazetted - Validity of acquisition - Whether acquisition proceedings thereof tainted by delay - Award of compensation - Whether valid - Sarawak Land Code (Cap 81) ss. 47, 48, 49 & 51

WORDS AND PHRASES: "thereupon" - Section 49(1) Sarawak Land Code.

In January 1973, the State Government of Sarawak (the Government) published in the Gazette a notice under s. 47 Sarawak Land Code (the Code) to the effect that a certain parcel of land (the said land) was likely to be needed for the development of Bintulu Town. About 12 years later, on 20 December 1984, the Government made a declaration under s. 48 of the Code to the effect that part of the said land was to be acquired for the establishment of a certain school. On 12 December 1985 the Government made yet another s. 48 declaration in the Gazette stating that another part of the said land was to be acquired for the establishment of the same school. Six months after that, on 27 May 1986, the Superintendent of Lands and Surveys, Fourth Division (the Superintendent), the second defendant herein, pursuant to an inquiry held under s. 51 of the Code, made an award of compensation in respect of the acquired two portions of the said land. The award made was based on the market value of the land in 1973, the year the s. 47 notice was published.

The applicants, the owners of the land, applied for an order of *certiorari* to quash the said award on the grounds, *inter alia*, that the award was null and void as there was an unreasonable delay of 13 years between the s. 47 notice and the making of the award. The applicants alleged this delay was contrary to the requirements of s. 3(14) of the Interpretation Ordinance, which required such award to be made in reasonable time. It was further submitted that the acquisition lacked *bona fide* on the part of the Government and in any case amounted to an abuse of power of the defendants.

The question that arose was whether the holding of the inquiry, including the making of the said award, is a prescribed act that must be done after the s. 47 notice, so that any unreasonably long delay in making it would have the effect that it was made in contravention of the statutory requirements and therefore not a valid exercise of power, so as to entitle the applicants to the relief sought.

Held:

[1] Upon reading the provisions of ss. 47, 48 & 49 of the Land Code it is patently clear that the holding of the inquiry into compensation under s. 51 is not an act which the Superintendent is required to perform upon the publication of the s. 47 notice. It is only upon the publication of the declaration under s. 48 that the Superintendent is legally bound under s. 49 to take the necessary steps mentioned therein towards finalisation of the inquiry under s. 51. That this is so is clearly indicated in s. 49 by the word "thereupon" in para (1) thereof which refers to the publication of the s. 48 declaration and not the publication of the s. 47 notice. Since the holding of an inquiry into compensation herein is not a prescribed act to be done upon the publication of the s. 47 notice, it is misconceived for Counsel for the applicants to have invoked s. 3(14) of the Interpretation Ordinance in support of his contention that the inquiry must be held within a reasonable time or as soon as possible after the s. 47 notice.

[2] Sections 47 and 48 of the Code are mutually exclusive of each other and do not form part and parcel of the acquisition process, so that the question of delay is irrelevant in so far as the making of the s. 48 declaration is concerned. However, even assuming that the question is relevant, and even assuming further that there was a delay here in making the award, such delay would not have the suggested effect of rendering the award so unreasonable or perverse that no authority could have reached it, as to warrant intervention or the issue of *certiorari* by the Court.

[3] The award of compensation based on the market value at the date of the publication of the s. 47 notice is perfectly valid. The award was made in line with the provision of s. 51(b) of the Code which, *inter alia*, requires the award of compensation to be made in accordance with s. 60, under which the amount of the compensation to be awarded shall be "the market value at the date of the publication of the notification under s. 47 or, if no such notification has been published, the market value at the date of the declaration made under s. 48".

[4] The contention that by the publication of the s. 48 declaration requiring the land for the establishment of a school, a purpose entirely different from the original purpose contemplated in the s. 47 notice, the Government must have abandoned the s. 47 notice and therefore the said notice was no longer valid with the result that the award should have been based on the 1985 value and not 1973 value, is untenable. The notice under s. 47 creates no rights of acquisition and therefore the question of abandonment of the rights under it does not and can never arise. That apart, the s. 47 notice also has a seperate existence of its own, and is independent of the s. 48 declaration, so that its validity cannot be defeated merely on account of the fact that the acquisition under the s. 48 declaration is for a purpose other than that stated in the s. 47 notice. So long as the purpose stated in the section 48 declaration is a public purpose within the meaning of s. 46, which it clearly is, the fact that it is not the same as that stated in the s. 47 notice does not have the effect of invalidating the acquisition proceedings or the award of compensation.

[Application dismissed].

Cases referred to:

Pemungut Hasil Tanah, Daerah Daya, Pulau Pinang v. Ong Gaik Kee [1983] 2 MLJ 37 ***(refd)***
Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [1947] 2 All ER 680 ***(refd)***
Superintendent of Lands & Surveys, Fifth Division, Limbang v. Lim Teck Hoo & Anor. [1980] 1 MLJ 58 ***(foll)***
Grice & Anor. v. Pudley Corporation [1957] 1 Ch. 329 ***(dist)***

Legislation referred to:
Federal Constitution, Article 13(2)
Interpretation Ordinance (Cap. 1), s. 3(14)
Rules of the High Court 1980, O. 53 r. 1(2)
Sarawak Land Code (Cap. 81), ss. 47(1), (2), (3), 48(1), (2), (3), 49(1), (2), 51(1)(b), 60, 79
Lands Clauses (Consolidation) Act 1845, ss. 76, 77 (UK)
Public Works Facilities Act 1930 (UK)

Other sources referred to:
H.W.R. Wade on Administrative Law, 5th Edn., p. 377

For the applicants - Chong Siew Chiang; M/s. Chong Brothers
For the respondents - David Sio, Lands & Surveys Department Kuching

JUDGMENT

John Chong Yik Liong J:
The applicants were at all material times the registered co-owners of all that parcel of land ("the said land") situate at Bintulu Seabiew Road, Bintulu, Sarawak, containing an area of 23.876 hectares (59 acres) and described as Lot 778 Kemena Land District. The said land was subsequently subdivided into 4 sublots, namely, Lot 1111 Block 32 containing 10.561 hectares (26.10 acres), Lot 1149 Block 32 containing 2148 square meters, Lot 1112 Block 32 containing 9.932 hectares and Lot 1110 containing 3.296 hectares.

On 25 January 1973 the Government of Sarawak ("the Government") published in the Sarawak Government Gazette a notice under s. 47 of the Sarawak Land Code (Cap. 81) under G.N. No. 274 ("the s. 47 notice") to the effect that the said land was likely to be needed for the development of Bintulu Town. Almost 12 years later, i.e., on 20th December, 1984, the Government made a declaration under s. 48 ("the section 48 declaration") to the effect that part of the said land, containing 10.04 hectares (24.82 acres), was needed for the establishment of Sekolah Menengah Kerajaan Bandar Bintulu. On 12 December, 1985, the Government made yet another section 48 declaration under Gazette Notification No. 4745 to the effect that part of the said land, containing 4.15 hectares (10.25 acres) was needed for the establishment of Sekolah Menengah Kerajaan Bandar Bintulu. On 27 May 1986 pursuant to s. 51 of the Land Code, the Superintendent of Lands and Surveys, Fourth Division ("the Superintendent") made an award of compensation under Award No. 72/1986 in the sum of RM191,400 in respect of those two portions of land, described as lot 1111 and Lot 1149 Block 32 Kemena Land District. The applicants were dissatisfied with the award, which was made on the basis of the market value at the date of the publication of the s. 47 notice, and pursuant to leave of the Court given on 29 September 1986 upon an ex parte application, they applied by originating notice of motion dated 6 October 1986 for an order of *certiorari* to remove into this Court for the purpose of its being quashed (i) the s. 47 notice; (ii) the decision of the Minister of Lands and Forestry, the predecessor of the Minister of Resource Planning, the 1st respondent herein, to the effect that the said land was likely to be needed for the development of Bintulu Town; (iii) the s. 48 declaration published under G.N. No. 4086; (iv) the s. 48 declaration published under G.N. No. 4745; (v) the award made by the Superintendent on 27 May 1986; and (vi) the entire compulsory resumption proceedings in respect of the said two parcels of land.

The grounds upon which the application is made are contained in the statement filed by the applicants pursuant to O. 53 r. 1(2) of the Rules of the High Court 1980. They are as follows and I quote:

1. That the Minister's power conferred by s. 47 of the Land Code has been used for an improper or unlawful purpose.
2. That having regard to s. 3(14) of the Interpretation Ordinance (Cap. 1) of Sarawak, all acts or procedures in the compulsory resumption process prescribed by the Land Code must, where no time is specified, be done within a reasonable time.
3. That the power given by s. 47 to enter upon and conduct survey and do all other acts necessary to ascertain the suitability of the land must be exercised within a reasonable time after publication of the s. 47 notice; and that the long and inordinate delay in exercising of such power, and/or in making the declarations under s. 48 of the Land Code would lead to a presumption that the exercise of the power of acquisition was a colourable one motivated by considerations entirely extraneous to the original purpose of the acquisition thereby rendering the Minister's decision and the s. 47 notice null and void.
4. That, following publication of the s. 47 notice, either a declaration under s. 48 or a withdrawal from resumption under s. 79 must be made within a reasonable time and that the two declarations under s. 48, G.N. No. 4086 and G.N. No. 4745 made 12 years after the publication of the s. 47 notice G.N. No. 274 are outside such reasonable time and accordingly the two declarations under Section 48 are null and void.
5. That the said award (Award No. 72/1986) made on 27 May 1986 which was based on the market value of the land in January 1973 when the notice under s. 47 of the Land Code G.N. No. 274 was given, is grossly unfair and amounted to an abuse of power and/or a fraud on the power conferred by the statute thereby vitiating the whole acquisition proceedings. The value of the land in question is currently worth about RM110,000 per acre (0.4047 hectare).
6. That there has been a long and inordinate delay of over 13 years between the date when the s. 47 notice was given and the date when the award (Award No. 72/86) of the Penguasa Tanah dan Ukur, Bahagian Keempat was made and such delay tantamounts to an abuse of power and is contrary to the express or implied statutory requirements thereby rendering the award null and void and an illegality.
7. That the long and undue delay of 13 years between the publication of the s. 47 notice and the holding of the inquiry into compensation vitiated the award and rendered it null and void. The compensation awarded is also contrary to Clause of Article 13 of the Federal Constitution.
8. That the undue delay of over 13 years between the publication of the s. 47 notice, G.N. No. 274 and the finalisation of the inquiry tantamounted to an abuse of power and rendered the inquiry and subsequent proceedings including the award null and void.
9. That the said two parcels of land were acquired for purposes other than that specifically mentioned in the s. 47 notice G.N. No. 274 thereby rendering the declarations G.N. No. 4086 and G.N. No. 4745 and the award null and void.

I shall deal with these grounds in the order in which they were presented by learned Counsel for the applicants in his written submission.

Learned Counsel first submitted in reference to grounds 2, 6 and 8 to the effect that although the Land Code does not prescribe the time within which the inquiry into the compensation must be held, or within which the award must be made, s. 3(14) of the Sarawak Interpretation Ordinance, which reads,

> A prescribed act or thing shall, if no time is prescribed, be done with all convenient speed and as often as the prescribed occasion arises

requires that it must be done with "all convenient speed" which expression has been judicially defined in Pemungut Hasil Tanah, Daerah Daya, *Pulau Pinang v. Ong Gaik*

Kee [1983] 2 MLJ 37 as meaning "as soon as possible" or "within a reasonable time". He therefore contended that the delay of 13 years between the s. 47 notice and the making of the award, resulting in the diminution of the applicants' interest, amounted to an abuse of power and was contrary to the requirements of s. 3(14) of the Interpretation Ordinance, thereby entitling the applicants to an order of *certiorari*.

The question that arises from this contention is whether the holding of the inquiry, including the making of the award, is a prescribed act that must be done after the s. 47 notice, so that any unreasonable long delay in making it would have the effect that it is made in contravention of the statutory requirements and does not constitute a valid exercise of the power, so as to entitle the applicants to the relief sought in this application. For an answer to this question it is necessary to refer to ss. 47, 48, 49 and 51 of the Sarawak Land Code. These sections, so far as material read:

> 47. (1) Whenever the Minister decides that land in any locality is likely to be needed for any of the purposes specified in s. 46, the Superintendent shall cause a public notice of the substance of such decision to be given at convenient places in such locality, and thereupon any officer or other person either generally or specially authorized by the Minister in this behalf and his servants and workmen may enter upon such land and may survey, bore, take levels, set out and mark boundaries, and do all other acts necessary to ascertain whether the land is suitable for such purpose.
>
> (2) As soon as conveniently may be after such entry, the Superintendent shall assess the compensation for damage resulting therefrom.
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> (3) Such compensation shall not become payable so far as it relates to any land which is resumed under s. 48 and, if paid, shall be refunded to the Government on demand by the Superintendent.
>
> (4) ...
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> 48. (1) Whenever it appears to the Minister that any particular land is needed for any of the purposes specified in s. 46, the Minister shall make a declaration to that effect.
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> (2) The declaration shall be posted in the office of the Superintendent and of the District Officer and shall state the situation of the land, the particular purpose for which it is needed, its approximate area and all other particulars necessary for identifying it and also the place where a plan of the land, if any, has been made, may be inspected. Such declaration shall be conclusive evidence that the land is needed for the purpose specified therein.
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> (3) Upon the posting of such declaration an entry thereof shall be made in the Register in respect of the land affected.
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> 49. (1) The Superintendent shall thereupon cause a plan of the land to be made, if none already exists, and shall cause notices to be posted at convenient places on or near the land to be taken stating that the Government intends to take possession thereof and that claims to compensation for all interests therein may be made to him.
>
> (2) Every such notice shall state the particulars of the land and shall require all persons interested therein to appear personally or by agent before the Superintendent at a time and place in such notice mentioned, such time not being earlier than twenty-one days after the date of posting of the notice, and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests and their objections, if any, to the measurements as surveyed ...
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> 51. (1) On the day so fixed, or on any other day to which the inquiry has been adjourned, the Superintendent shall proceed to inquire into the objections, if any, which any person interested has stated, pursuant to a notice given under s. 49, to the measurements as

surveyed, and into the value of the land, and into the respective interests of the persons claiming the compensation, and shall make an award under his hand of:

(a) ...

(b) the compensation which in his opinion should be allowed for the said land in accordance with the directions contained in ss. 60 and 61 ...

Upon a plain reading of the above-quoted provisions, it is patently clear that the holding of the inquiry into the compensation under s. 51 is not an act which the Superintendent is required to perform upon the publication of the section 47 notice. It is only upon the publication of the s. 48 declaration that the Superintendent is legally bound under section 49 to take the necessary steps therein mentioned towards finalisation of the inquiry under s. 51. That this is so is clearly indicated in s. 49 by the presence of the word "thereupon" which, in my view, refers to the publication of the s. 48 declaration and not the publication of the s. 47 notice. Section 47 merely provides a means by which the Government may enter upon land for the purposes of ascertaining its suitability for the purposes stated in the notice before it decides whether to acquire it or not, and the only duty it imposes on the Superintendent is to assess the compensation payable to the landowner for the damage caused to the land as a result of such entry. Since the holding of an inquiry into compensation is not a prescribed act to be done upon the publication of the s. 47 notice, it is misconceived for learned Counsel for the applicants to have invoked s. 3(14) of the Interpretation Ordinance in support of his contention that the inquiry must be held within a reasonable time or as soon as possible after the s. 47 notice.

Learned Counsel next submitted in reference to grounds 3 and 5 that a delay of over 13 years for the Superintendent to make an award is so far outside the normal period of time that no reasonable authority could ever regard it as reasonable, and that, that being the case, the Court is entitled to quash the award on the ground that it is against the principle of reasonableness, relying, *inter alia*, on *Associated Provincial Picture Houses Ltd v. Wednesbury Corporation* [1947] 2 All ER 680 where Lord Greene M.R. said, at page 685:

> I do not wish to repeat what I have said, but it might be useful to summarise once again the principle, which seems to me to be that the court is entitled to investigate the action of the local authority with a view to seeing whether it has taken into account matters which it ought not to take into account, or, conversely, has refused to take into account or neglected to take into account matters which it ought to take into account. Once that question is answered in favour of the local authority, it may still be possible to say that the local authority, nevertheless, have come to a conclusion so unreasonable that no reasonable authority could have come to it. In such a case, again, I think the Court can interfere.

With respect, I find no substance in this line of argument though I agree, as a matter of law, that *certiorari* will issue to quash a decision which is so unreasonable or perverse that no reasonable authority, properly directed itself as to the law to be applied, could have reached such a decision: I say this for the following reasons. First, the complaint that there was a delay of over 13 years in making the award is baseless, because the holding of the inquiry and the making of the award under s. 51 commences only after the s. 48 declaration and not after the s. 47 notice.

Secondly, even assuming that there were unreasonable delay in making the award, such delay would not have the suggested effect of rendering the award unreasonable within the *Wednesbury* principles as to warrant intervention by the Court. Furthermore, it was

not in dispute that the award made by the Superintendent in the present case was based on the market value at the date of the s. 47 notice, and as such, there is nothing unreasonable or perverse about the award, having regard to s. 51(b) of the Sarawak Land Code which, *inter alia*, requires the award of compensation to be made in accordance with s. 60, under which the amount of the compensation to be awarded shall be "the market value at the date of the publication of the notification under s. 47 or, if no such notification has been published, the market value at the date of the posting of the declaration made under s. 48" - see subsection (1)(a).

Learned Counsel next submitted on ground 7 that *certiorari* could still lie because the long delay of 13 years between the s. 47 notice and the holding of the inquiry had resulted in an inadequate compensation to the applicants and such compensation was contrary to Article 13(2) of the Federal Constitution. With respect, I find no merits in this submission. In the first place, the holding of the inquiry into compensation does not commence with the s. 47 notice, and it is therefore misconceived for learned Counsel to have computed the period of delay from the date of the s. 47 notice. In the second place, I do not think that clause 2 of Article 13 of the Federal Constitution can be invoked merely on the ground of inadequacy of the compensation, for this clause deals with the constitutional requirement of an expropriatory law that "no law shall provide for the compulsory acquisition or use of property without adequate compensation." In the present case the constitutionality of Part IV of the Land Code providing for resumption or acquisition of alienated land is not a point at issue. There is no challenge made against those provisions for not providing adequate compensation or in any way as being contrary to this clause. This clause is therefore not relevant and inapplicable in this case.

Learned Counsel next submitted in reference to ground 3 that a long delay of 12 years in making the s. 48 declaration after the s. 47 notice should equally be a relevant factor in laying siege to the original notification under s. 47. It was said that the issuance of the s. 48 declaration 12 years after the s. 47 notice was a colourable exercise of power motivated by consideration entirely extraneous and collateral to the original purpose of the acquisition. It was also said that such delay was sharp and pointed evidence of lack of bona fides for the exercise of the power, inasmuch as it tended to hold the claimants at ransom and denied them compensation within a reasonable time; that the delay operated only to the hardship and prejudice to the citizen alone and not to the Government, which has the power at any time to withdraw from acquisition if the prices for the land drop considerably. It was therefore contended that to satisfy the test of *bona fides*, there must exist a present need for acquisition for the execution of an existing public purpose, i.e., both the public purpose and the need for execution must be present and not wholly in future, and that any purported acquisition for a vague public purpose which might or might not arise in the future on the pegged down market value was thus assailable as a colourable exercise of power. Further, the exercise of power was a colourable attempt to freeze prices forthwith for an acquisition years later when they might well be double, treble or quadruple of the existing one and the immediate effect of s. 47 notice was that the market value of the land was artificially pegged down on that date. In the premises, learned Counsel concluded that for the Government to do so at the expense of the citizen would be a fraud on the power conferred by statute, and that the long delay would lead to an inflexible presumption that in fact there was no immediate need for an existing public purpose and the exercise of power of acquisition would thus be a colourable one.

The validity of this argument, however attractive it may sound, may be tested by a consideration of relationship between s. 47 and s. 48. Section 47, as has been said, merely provides for power to enter and survey the land for the purpose of determining its suitability for the purposes stated in the notice. Although the s. 47 notice has the effect of freezing the value of the land at the date of its publication, it does not, however, operate as an act of acquisition, for despite such notice the Government is not legally bound to proceed with the acquisition. It is s. 48 that provides for powers of acquisition, for it operates as a declaration that the land is needed for a public purpose, and upon its posting, an entry is made in the Register in respect of the land affected. Thus, these two sections are mutually exclusive of each other and do not form part and parcel of the acquisition process, so that the question of delay is irrelevant in so far as the making of the 48 declaration is concerned. In Superintendent of Lands & Surveys, Fifth Division, *Limbang v. Lim Teck Hoo & Anor.* [1980] 1 MLJ 58, where there were 4 successive different section 48 declarations, made more than 3 to 5 years after the s. 47 notice and all for different public purposes, different from that stated in the section 47 notice, the then Federal Court was unanimous in its opinion that the s. 48 declarations were all valid, because s. 47 and s. 48 were not "intimately connected" and that the doctrine of exhaustion did not apply in order to invalidate them. Since s. 47 and s. 48 are not inter-connected and do not form an integral process, the question of delay does not arise. It follows that so far as the s. 48 declaration is concerned, delay cannot be used as a ground for vitiating the process of acquisition. Accordingly, the argument of learned Counsel based on delay is irrelevant. It may well be true that in the present case pecuniary loss has been caused to the applicants by the "delay" in the making of the s. 48 declaration, but this in my view is not in itself sufficient to justify intervention by the Court, because the making of the s. 48 declaration is not a prescribed act that is required either expressly or impliedly by law to be done after the s. 47 notice. In this connection, I can only echo the sentiments expressed by Lee Hun Hoe CJ (Borneo) (as he then was) in the *Lim Teck Hoo* case *(supra)* where his Lordship said at page 61:

> I take the view that under the Sarawak legislation it is possible for more declarations than one under s. 48 to be made in respect of land comprised in a notification under s. 47. I am aware where compensation has to be determined with reference to the material date under s. 47 any delay in making a declaration under s. 48 is bound to cause the person whose land is to be acquired to suffer pecuniary loss if land prices have arisen between the period of notification under s. 47 and declaration under s. 48. The delay would be longer if successive declarations under s. 48 could be made in respect of land comprised in the notification under s. 47. It could also work in the reverse if the land prices tumble down. I hope the government would try to minimise the delay in making the declaration or declarations. One way of preventing long delay would be to fix a time whereby notifications under s. 47 would automatically lapse. Another way is to withdraw resumption under s. 79 as soon as the land is no more required for public purpose. In my view as long as the publication of the notifications under s. 47 exists there is nothing to prevent the making of more declarations than one under s. 48 involving the acquisition of a large area as in this case.

It was lastly contended in reference to ground 9 that by the publication of the s. 48 declarations requiring the land for the establishment of school, a purpose entirely different from the original purpose contemplated in the s. 47 notice, the Government had abandoned the s. 47 notice and therefore, the s. 47 notice was no longer valid or of legal effect and ought to be quashed. Under this contention, learned Counsel submitted that as s. 47 and s. 48 are not "intimately connected" and as the Government is entitled to issue a declaration under s. 48 without having to precede it by a notification under s. 47,

it must necessarily follow that the Government had abandoned its right under the s. 47 notice and proceeded independently under s. 48 declaration, and that being so, the award should not have been based on the 1973 value but on the 1985 value. In support learned counsel cited *Grice & Anor. v. Pudley Corporation* [1957] 1 Ch. 329 where the headnotes read:

> In 1937 the defendant corporation made a compulsory purchase order, pursuant to the Public Works Facilities Act 1930, which provided that the Lands Clauses (Consolidation) Act 1845, should apply to such order, authorizing them to acquire the property of K. for the purposes of road widening and erecting a market hall. On 2 December 1938, the Minister of Transport approved the scheme and the corporation served a notice to treat dated 4 January 1939, on K. In July, 1939, the parties agreed that the compensation for the property should be £5,700 and a further £300 for fixtures and fittings. Owing to the outbreak of war in September, 1939, the matter lapsed. On 28 December 1942, K. died, having by his will appointed the plaintiffs to be her executors. Between 1951 and 1954 various new schemes of improvement differing substantially from that compared in the 1937 order were proposed by the corporation but no final plans were made. In August 1954, the corporation raised the question of purchasing the plaintiffs property at the price agreed in 1939, to which the plaintiffs objected, and in 1955 the corporation threatened to pay compensation money into Court and execute a deed poll vesting the property in themselves pursuant to ss. 76 and 77 of the Land Clauses (Consolidation) Act 1845.
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> In an action by the plaintiffs for a declaration that the notice to treat, dated 4 January 1939, was no longer valid and effective, it being admitted by the corporation that their plans for development although not yet finalized, did not include either the road widening or the provision of a market hall:
>
> Held: (1) ...
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> (2) That where a promoter evinced an intention to abandon rights given him by a notice to treat, the owner was entitled to treat those rights as abandoned; and that the fact that the corporation were attempting to acquire the property for purposes substantially different from those set out in the compulsory purchase order of 1937, amounted to an abandonment of that order, and, thus, the abandonment of their rights under the notice to treat which was no longer valid and or legal effect; and that, accordingly, the defendants had no powers under or by virtue of the order to acquire the plaintiffs' property.

The case cited in my view can be distinguished from the present case. In that case the issue of the notice to treat pursuant to the compulsory purchase order constituted an exercise of compulsory purchase powers and created a quasi-contract between the parties for the sale of the property, so that any attempt on the part of the acquiring authority to acquire the property for purposes other than those authorized by the compulsory purchase order would amount to an abandonment of that order, and hence, an abandonment of the rights under the notice to treat. However, the same could not be said of the instant case because, unlike the notice to treat, the s. 47 notice does not constitute an exercise of acquisition powers, nor does it create any quasi-contract between the Government and the applicants for the sale of the said land. Since the s. 47 notice creates no rights of acquisition, the question of abandonment of the rights under it does not, and can never, arise. Moreover, unlike the notice to treat whose existence depended on the compulsory purchase order, the s. 47 notice has a separate existence of its own, and is entirely independent of the s. 48 declaration, by which the powers of acquisition are exercised, so that its validity cannot be defeated merely on

account of the fact that the acquisition under the s. 48 declaration is for a purpose other than that stated in the s. 47 notice. I am of the view that so long as the purpose stated in the s. 48 declaration is a public purpose within s. 46, that fact that it is not the same as that stated in the s. 47 notice does not have the effect of invalidating the acquisition proceedings - for under s. 48(2), it is the s. 48 declaration, and not the s. 47 notice, that is "conclusive evidence that the land is needed for the purpose specified therein." In the present case, the two s. 48 declarations each stated that the land was required for the purpose of "the establishment of Sekolah Menengah Kerajaan Bandar Bintulu" and this purpose was undisputedly a purpose within s. 46(a) which, *inter alia*, includes the "development of towns" and "any purpose reasonably necessary or desirable for such .... development." They were, therefore, "conclusive evidence" of the purpose for which the two parcels of land in question were required, and the mere fact that the acquisition was for purposes different from that specified in the s. 47 notice is not in the circumstance a valid ground for invalidating the acquisition process and accordingly, the award of compensation based on the market value at the date of the publication of the s. 47 notice is perfectly valid. Accordingly, I reject Counsel's argument on this ground.

Learned Counsel additionally contended under ground 9 that inconsistency on the part of the authority in the purposes for which the land was acquired amounted to a abuse of power and thus invalidated the s. 47 notice. In support, he referred to **H.W.R. Wade on Administrative Law,** 5th Edn., where at page 377 it is stated:

> Inconsistency of conduct may also amount to an abuse of discretion. The Court of Appeal has held that a public authority has a duty to act with fairness and consistency in its dealings with the public, and that if it makes inconsistent decisions unfairly and unjustly it misuses it powers. Consequently the Price Commission was declared unable to issue a new ruling contradicting its previous statement that tax payments were permissible item of costs for the purpose of calculating increases of price by television programme contractors. One element of unfairness was that the contractors had been led to believe that they could safely act on the ruling given to them.

It appears to me that this argument has to a greater extent gone outside ground 9. Be that as it may, I do not think that in the present case the authority, i.e., the Government, could be said to have misused it powers merely because the purpose for acquisition under each of the two s. 48 declarations was not the same as that stated in the s. 47 notice, for the simple reason that the s. 47 notice was not part and parcel of the acquisition process and did not amount to a decision to acquire for the purpose therein stated. For this reason and the reasons which I have stated when dealing with the earlier alternative submission on this ground, I find no merit in this additional argument.

It may be observed that learned Counsel did not deal with grounds 1 and 4 in his written submission, nor did he make any oral submission thereon, and I must therefore treat them as having been abandoned.

Accordingly, and for the reasons hereinbefore stated, I would dismiss the application of the applicants with costs.